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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/681,314

10/09/2003

Takeshi Kumakura

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EXAMINER

PATEL, JAYESH A

ART UNIT

PAPER NUMBER

2635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/22/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/681,314

Applicant(s)

KUMAKURA, TAKESHI

Examiner

Jayesh A. Patel

Art Unit

2635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/03 and 10/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 5,6,9,10,16,18,24,26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "approximating" in claims 5,6,9,10,16,18,24,26 is a relative term, which renders the claim indefinite. The term "approximating" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs, which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and

Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (Claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 21-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 21-28 are drawn to a Computer program embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed **[a computer program]** can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10,12-18,20-26 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Canelones et al. (US 6700589) hereafter Canelones.

1. Regarding Claims 1,13, and 21, Canelones discloses an apparatus, a method and a program for magnifying an image in (Fig 1) comprising: a differentiability judgment portion for judging differentiability in an original image to be magnified, based on human vision characteristics at (Col 2, Lines 28-45) and a magnification processing portion for generating a magnified image of the original image by magnifying the original image in a manner that is adapted to the differentiability judged by the differentiability judgment portion at (Col 2, Lines 45-65).

2. Regarding Claims 2,14 and 22, Canelones discloses an image processing apparatus according to claim 1,13 and 21, wherein the differentiability judgment

portion judges the differentiability based on gradation characteristics of human vision at (Col 2, Lines 28-65).

3. Regarding Claims 3,15 and 23, Canelones discloses an image processing apparatus according to claim 1,13 and 21, wherein the differentiability judgment portion comprises: a decomposing portion for decomposing the original image into a plurality of constituent images, based on spatial frequency and a threshold processing portion for determining the differentiability of each of the constituent images by classifying the plurality of constituent images with a predetermined threshold value based on human vision characteristics at (Col 2, Lines 50-53) wherein the magnification processing portion magnifies the constituent images obtained with the decomposing portion in a manner that is adapted to the differentiability determined by the threshold processing portion for each of the constituent images, and generates a magnified image of the original image by combining the magnified constituent images (Col 2 ,Lines 54-65 and Fig 2a and Fig 2b.).

4. Regarding Claim 4, see explanation of Claim 3.

5. Regarding Claims 5-10, Canelones discloses an apparatus at (Col 2 Lines 28-65 and Figs 2a and 2b).

6. Regarding Claims 12,16 –18,20,24-26 and 28 Canelones discloses an apparatus and method at (Col 2, Lines 28-65) and Figs 2a and 2b.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canelones in view of Gilblom (5959605) hereafter Gilblom.

7. Regarding Claims 11, Canelones discloses all the limitations of claim 1.

Canelones does not disclose a measuring portion for measuring a visual distance from the display. Gilblom however discloses a position determining means to achieve the desired magnification at (Col 1, Lines 55-65, Col 2 Lines 1-36).

Both Canelones and Gilblom are from the same field of endeavor and are analogous art. Therefore, it would have been obvious, for one of ordinary skill in the art at the time the invention was made to make a device which permits the operator to **selectively magnify a portion of the displayed image, while permitting the operator to appreciate the magnified image within its original context** and attach it to the apparatus of Canelones.

8. Regarding Claims 19 and 27 see explanation of Claim 11.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jayesh A. Patel whose telephone number is 571-270-1227. The examiner can normally be reached on M-F 7.00am to 4.30 pm (5-4-9). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin M. Lateef can be reached on 571-272-5026. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jayesh. Patel
12/14/06

JP


MARVIN LATEEF
SUPERVISORY PATENT EXAMINER